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November 8, 2010

Water Docket  
U.S. Environmental Protection Agency,  
Mail code: 2822T,  
1200 Pennsylvania Ave., NW.,  
Washington, D.C., 20460

**RE: Docket No. EPA-R03-OW-2010-0736**  
**Comments - EPA's Draft Chesapeake Bay TMDL and its Impact on INVISTA,**  
**Seaford, DE**

Dear Madam/Sir:

Thank you for the opportunity to comment on the EPA's Draft Chesapeake Bay Total Maximum Daily Load (Draft TMDL). I am writing on behalf of the INVISTA manufacturing facility located in Seaford, Delaware. INVISTA's Seaford site makes a meaningful contribution to the Delaware economy. As of August 31, 2010, INVISTA employed approximately 125 individuals at the Seaford site – not including outside contractors – in a wide variety of roles that include management, administration, utilities, maintenance, mechanical, project management, and production jobs. Based on an economic multiplier of 4.3 for fiber manufacturing in Delaware (as calculated by the U.S. Dept. of Commerce Bureau of Economic Analysis), INVISTA Seaford is responsible for creating the effect of more than 500 jobs in the Delaware economy.

INVISTA's Seaford facility manufactures textile fiber products. All domestic and process wastewater is sent to an on-site wastewater treatment plant ("WWTP"). Treated process waters from our industrial processes are permitted to discharge, along with storm water, non-contact cooling water, and other authorized streams. The *Delaware National Pollutant Discharge Elimination System* (NPDES) Permit allows for the discharge of wastewater from our facility to the Nanticoke River. The site's NPDES Permit Number DE 0000035 (State Permit No. WPCC 3223D/74) was issued August 15, 2006 by the Surface Water Discharge Section of the State of Delaware's DNREC. As a textile fibers manufacturer, the wastewater discharge from INVISTA's Seaford WWTP is subject to federal effluent guideline limitations for the Organic Chemical Plastics and Synthetic Fibers ("OCPSF") standards, which are incorporated into the NPDES permit.

While INVISTA appreciates the efforts by both EPA and the individual states to compile the necessary data and develop the respective WIPs and draft TMDL we nevertheless have some serious concerns. These written comments will focus on the impacts specific to INVISTA – Seaford. With respect to our other concerns, we refer EPA to the written comments provided by the Federal Water Quality Coalition.

## **1. The Draft TMDL Should Provide Sufficient Waste Load Allocations to Allow for Future Growth at INVISTA-Seaford**

In 2009, certain operations at the INVISTA-Seaford manufacturing facility were curtailed, including nylon polymerization and carpet fiber processes. Remaining production includes specialty staple products using polymer that is manufactured at other INVISTA facilities.

This change in production has reduced the amount of process wastewater generated at INVISTA-Seaford. In order to provide more effective and efficient treatment, INVISTA is installing a smaller capacity treatment system to better address its current wastewater demands.

However, to ensure maximum operational flexibility at the site, the existing treatment facility will not be dismantled. This provides INVISTA the option to reinstate its larger treatment plant operations if the Seaford facility elects to increase production or seek other manufacturing partners to expand the site's operational footprint.

During the past two years, INVISTA-Seaford has conducted several discussions with the State of Delaware Department of Natural Resources and Environmental Control (DNREC) pertaining to its facility's restructuring efforts and how such restructuring of the facility would affect its NPDES Permit. At DNREC's request, INVISTA voluntarily agreed to reduce the facility's TMDL waste load allocation for Total Nitrogen ("TN") from a moving 12-month cumulative average net load limit of 430,700 pounds to a 215,000 pounds moving 12-month cumulative average net load limit. Even though the pending revised TN permit load of 215,000 pounds is above the INVISTA Seaford's facility present discharge of nitrogen to the Nanticoke River, it is a significant reduction for the Seaford facility.

There were no formal discussions at that time pertaining to total phosphorus, as DNREC had previously determined the facility's waste load allocation for total phosphorus to be zero [defined as "none detectable" using an approved analytic method that has a method detection level of 0.1 mg/L.]

The final decision to reduce production at Seaford was made with careful and thoughtful consideration for the many impacts to both INVISTA employment and the local community. If the facility's future growth is limited by a greatly reduced TMDL, current job opportunities and growth potential could be at risk. Our inability to significantly increase production could impair INVISTA-Seaford's long-term viability as well as impact our potential to provide increased employment in southern Delaware.

## **2. Waste Load Allocations for Delaware Industrial WWTPs Should Be the Same as those Allocations Found in the State WIP**

The EPA has proposed imposing backstop allocations upon point sources within states who's Watershed Implementation Plans (WIPs) have been determined to be deficient in pollutant load reductions and/or reasonable assurance. EPA has proposed implementing high level backstop allocations for Delaware point sources. Under a high level backstop the waste load allocations (WLAs) for industrial WWTPs have been "reduced below the loads identified in the jurisdiction's draft Phase I WIP at a rate equivalent to significant municipal WWTPs . . . (down to 3 mg/L TN and 0.1 mg/L TP)." EPA's published proposed Total Nitrogen limit for the INVISTA Seaford facility of 59,828 lbs/yr is inconsistent with and significantly lower than the Delaware draft WIP allocation.

INVISTA believes that the current WLAs established by Delaware and reflected in the draft Phase I WIP, are appropriate for industrial dischargers, including significant industrial dischargers. Even more importantly, WLAs for industrial dischargers should never be less than those specified in the state's WIP. The Delaware WIP allocations are based on a history of modeling exercises, data collection and local research. The modeling and data analysis has been transparent and enabled all stakeholders to understand the process and the data. The Delaware WIP accounts for the facility-specific nature of industrial discharges. The Delaware DNREC has taken the time to understand how the differing process and wastewater characteristics as well as economics of each industrial facility result in varying wastewater discharge characteristics and thus differing impacts on water quality. With this in mind and based on extensive modeling and data analysis, the DNREC has matched the appropriate WLAs with each industrial facility. EPA cannot ignore the work conducted by DNREC and thus should not apply arbitrary nutrient loading limits as a result of its backstop efforts. Therefore, we request that the EPA TN allocation for the INVISTA-Seaford site match the allocation designated by the Delaware Phase I WIP.

### **3. Backstop Allocations Can Not be One Size Fits All, but Instead Must Be Specific to the Characteristics of Each Industrial Facility**

The Draft TMDL, as part of its high level and full backstop allocation descriptions, proposes to reduce the WLAs for industrial WWTPs to "a level where the reduction rates for significant industrial WWTPs by jurisdiction are equivalent to the significant municipal WWTP reduction from WIP to E3 (3 mg/l TN and 0.1 mg/l TP)." Further, unlike toxic pollutants such as metals, which require limits on concentration, nutrient limits should be load based and not concentration based. Applying concentration performance capability similar to a POTW upon an industrial facility is inappropriate. As we understand, the high level and full backstop allocations are based on the ability of publicly owned treatment works (POTW) to meet these limits through facility upgrades. However, the assumptions made and data evaluated for influent nitrogen and phosphorus concentrations and treatment and design capabilities at POTWs are not applicable to industrial operations, such as ours, that are generating and treating an entirely different wastewater stream

INVISTA respectfully suggests that it may be premature for EPA to impose such nutrient and sediment limits on dischargers other than a category EPA has studied—such as POTWs. As a textile fibers manufacturer, the wastewater discharge from INVISTA-Seaford's WWTP is subject to federal effluent guideline limitations for the Organic Chemical Plastics and Synthetic Fibers ("OCPSF") standards, which are incorporated into the facility's current NPDES permit. EPA has not established technology-based effluent limitations for either nitrogen or phosphorus for an OCPSF facility. Were EPA to propose technology-based effluent guideline limitations for these parameters, it would undergo an extensive rulemaking effort that included gathering and evaluating detailed wastewater influent, treatment and discharge information from the dischargers – municipal, industrial, or otherwise – that it intended to regulate with such standards. EPA should similarly collect and evaluate information from dischargers in the federal effluent category prior to imposing a limitation developed for POTWs that industries like INVISTA-Seaford may not be able to meet with current technology.

While we sincerely hope that EPA will not resort to the backstop provisions, INVISTA requests that at least for industrial facilities, the load allocations be based on mass load rather than concentration. While the latest technology such as biological nutrient removal (BNR) can reduce TN significantly, the final effluent concentration is a function of the influent TN concentration. Industry wastewater influent concentration can be significantly higher than that for a typical municipal facility. Therefore, while the percent removal (treatment capacity) of an industrial wastewater treatment facility can be equal or even better than a municipal facility, it would be difficult, perhaps impossible, to meet a concentration limit of 3 mg/L.

#### **4. The Comment Period was Insufficient to Allow for the Preparation and Submission of Informed Rebuttal Comments**

The Executive Summary of the Draft Chesapeake Bay TMDL states that this TMDL "will be the largest and most complex thus far – it is designed to achieve significant reductions in nitrogen, phosphorus and sediment pollution throughout a 64,000-square-mile watershed that includes the District of Columbia and large sections of six states. The TMDL is actually a combination of 92 smaller TMDLs for individual Chesapeake Bay tidal segments . . ." [See Draft TMDL, page iv] EPA and the states have spent years collecting data, refining models, developing pollutant allocations and strategizing implementation, yet, despite the significance and enormity of this draft TMDL, the Agency cut in half the typical 90-day comment period. Due to the complexity of the TMDL and the number of affected parties, the EPA's comment period of 45 days is too short to allow for the development of substantive comments. After the Agency considers the many comments it will receive and after the each state has updated its WIP, EPA should reopen the Draft TMDL for a more appropriate 90-day comment period.

I appreciate the opportunity to comment on the EPA's Draft Chesapeake Bay Total Maximum Daily Load (TMDL). If you have questions or comments, please do not hesitate to contact me directly at either the address on the letterhead, by email [Steven.R.Kimpton@invista.com](mailto:Steven.R.Kimpton@invista.com) or phone at 302-629-1865.

Sincerely,



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